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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES

No. ~~493.~~ 213

THE UNITED STATES, APPELLANT,

vs.

E. J. QUIGLEY.

APPEAL FROM THE COURT OF CLAIMS.

FILED SEPTEMBER 30, 1876.

SUPREME COURT OF THE UNITED STATES.

No. 493.

THE UNITED STATES, APPELLANT,

vs.

E. J. QUIGLEY.

APPEAL FROM THE COURT OF CLAIMS.

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1 I. *Petition.—Filed Jan'y* 16, 1868.

United States Court of Claims.

E. J. QUIGLEY
vs.
THE UNITED STATES. } No. 3054.

To the honorable the United States Court of Claims:

The petition of E. J. Quigley, of Washington, Davis County, Indiana, respectfully shows to your honors:

That your petitioner, before the commencement of the late rebellion, resided in the State of Georgia, and about the year 1860 removed thence to the State of Indiana, and before so removing placed his effects in the hands of one B. F. McKenna, with authority to dispose of the same, and pay your petitioner's debts.

That during the war the said B. F. McKenna, having funds of your petitioner in his hands, invested the same in the purchase of two bales of cotton, and the same were in the possession of the said Mr. McKenna in the city of Savannah when the said city was captured by the Army of the United States, in December, 1864, and the said two bales of cotton were taken possession of by the military authorities and registered as the property of B. F. McKenna, agent for E. J. Quigley, and marked A. B. 270, and A. B. 271, weighing respectively 530 & 515 pounds, and was turned over to an agent of the Treasury Department and shipped to the city of New York about the 16th of March, 1865, on board the schooner "Marcus Hunter," and were sold, and the proceeds placed in the Treasury to an amount of which your petitioner is not advised, but which he charges to have been not less than six hundred dollars, after paying all lawful expenses. And your petitioner claims that amount in this suit.

And your petitioner further shows that about the time of his leaving the State of Georgia, as herebefore stated, he was indebted unto Bernard Smyth and Henry A. Smith, comprising the firm of B. Smyth &
Co., of the city of New York, in the sum of $985.50, for which
2 they held his promissary note, a copy of which is hereto annexed, marked Exhibit A, and the said note being unpaid on the 19th day of September, 1865, and the said B. F. McKenna, being authorized to dispose of your petitioner's effects and pay the said note on the said 19th day of September, 1865, assigned to the said B. Smyth & Co. the proceeds of the said two bales of cotton, a copy of which assignment is hereto annexed, marked Exhibit B.

And your petitioner further shows that he was the owner of the said cotton, and is entitled to receive the proceeds thereof to the use of the said B. Smyth & Co., under the provisions of the 3d section of an act approved March 12, 1863, "to provide for the collection of abandoned property," &c. And that he and the said Bernard Smyth and Henry A. Smith have at all times borne true allegiance to the Government of the United States, and have never abetted or given any aid, comfort, or encouragement to the rebellion against the said government.

CARLISLE & McPHERSON,
For Claimant.

STATE AND COUNTY OF NEW YORK, *ss:*

Before the undersigned, a commissioner of the Court of Claims, personally appeared Bernard Smyth, and signed the foregoing petition, and

made oath that he is informed and believes that no assignment or transfer of the claim in the said petition stated, or of any part thereof, or any interest therein, is or has been made, except as is in the said petition stated, and that the claimant is justly entitled to the amount therein claimed from the United States, after allowing all just credits and offsets, and that he believes the facts as stated in the said petition are true.

BERNARD SMYTH.

Subscribed and sworn to before me this 4th day of January, A. D. 1868.

S. R. JOHNSON,
Notary Public City and County of New York.

3 II. *Answer and pleas.—Filed May* 25, 1868.

And the said defendants, by John J. Weed, their solicitor, come and make answer to the petition of the claimant on file herein; and, not confessing the same, or any part thereof, do hereby most expressly deny each and every the allegations therein contained, and call for strict proof of the same.

And as to so much of said petition as sets forth and avers that the United States are indebted to said claimant in the sum of six hundred dollars, the defendants say that they are not indebted to said claimant in said sum of money, nor any part thereof.

And as to so much of said petition as avers that the said claimants have at all times borne true faith and allegiance to the Government of the United States, and never voluntarily aided, abetted, or given
4 encouragement to rebellion against said government, the said defendants deny the truth of said allegation, and call for strict proof thereof.

JOHN J. WEED,
Assistant Solicitor for the United States.

And for a further plea to said petition, the defendants say that the said claimant ought not to have or maintain his aforesaid action against the said defendants, because they say that the said claimant did not, "within two years after the suppression of the late rebellion, prefer his claim to the proceeds" of the property mentioned and described in his said petition in the Court of Claims, as provided by the 3d section of the act of Congress approved March 12, 1863, and entitled "An act to provide for the collection of abandoned property, and for the prevention of frauds in insurrectionary districts within the United States." And this the said defendants are ready to verify. Wherefore the said defendants pray judgment, &c.

JOHN J. WEED,
Assistant Solicitor for the United States.

5 III. *Plea of alienage.—Filed July* 17, 1869.

And the said defendants, by their Attorney-General, come and make further and supplemental plea and answer to the petition of the claimant herein, by virtue and in pursuance of the provisions of the act of Congress entitled "An act regulating judicial proceedings in certain cases, for the protection of officers and agents of the government, and for the better defence of the Treasury against unlawful claims," approved

July 27, 1868, and for such further and supplemental plea and answer, and in addition to any and all former pleas, answers, and defences heretofore interposed by the defendants to the said petition, and not waiving or superseding such former pleas, answers, or defences, or either or any of them, the defendants say that the said claimant ought not to have or maintain his aforesaid action against the said defendants, because they say that the said claimant at the time of the filing of
6 his said petition was an alien, and that the said seizure and taking possession of the said property named in the said petition, and the said several acts and doings of the defendants, their officers, servants, and agents therein set forth, were made and done in the administration of and in virtue and under color of the act of Congress entitled "An act to provide for the collection of abandoned property, and for the prevention of frauds in insurrectionary districts within the United States," approved March 12, 1863.

Whereby, and by virtue of the provisions of the act of Congress first above mentioned, the claimant is barred of his said action against the defendants.

T. LYLE DICKEY,
Assistant Attorney General.

7 IV. *Findings of fact and conclusions of law.*

The court, upon the evidence, finds the facts to be as follows:

I. In 1860 the claimant was domiciled in the State of Georgia, doing business as a merchant at Dalton, and was also a native of that State. About the time of the secession of the State of Georgia, the claimant left the State and went to Indiana, where he remained during the rebellion.

II. Before he left the State of Georgia, the claimant gave to one B. F. McKenna a power of attorney authorizing him to manage for the claimant. Under this power McKenna collected or acquired money belonging to the claimant, and in 1864 invested it in two bales of cotton. The cotton was subsequently captured in Savannah and the proceeds thereof are in the Treasury, amounting to $350.66.

8 *Conclusion of law.*

That the claimant is entitled to recover the sum of three hundred and fifty dollars and sixty-six cents.

9 V.—*Opinion.*

NOTT, *J.*, delivered the opinion of the court:

It is indisputable that if the claimant had remained in the South during the war, and had served in a Confederate regiment, instead of coming to the North when Georgia seceded and serving in a United States regiment, he would have acquired a valid title to the cotton and been entitled to recover its proceeds by this suit. The only question in the case is whether certain decisions of the Supreme Court extend to and invalidate such a title as this.

The distinguishing feature of the case is the domicile of the claimant. At the outbreak of the rebellion his domicile was in Georgia. Like many other loyal persons, the claimant, foreseeing the impending war, abandoned his business and sought a refuge within loyal territory. A change of domicile is not shown by the evidence, and no court would

imply it against a refugee flying for safety amid such circumstances. A person may change his residence without changing his domicile, and an eminent judge has held that there was no change of domicile where the party removed from New Jersey to New York, resided there for two years, hired a house to dwell in, and described himself in deeds as of the city of New York. (1 Bradford R., 69.) Probably the claimant did not know when he left whether he would return or not. The unprecedented conditions of the situation were such that no man could tell how long the storm would last or how quickly it would end. Doubtless if a happy termination of the then portending trouble had come, the claimant would have returned to his home and business. A domicile is not lost until another is acquired; and none such being shown, the court must assume that when the cotton in suit was bought by his agent, the claimant remained domiciled in Georgia.

So far as the present case is concerned, the amount involved is trivial, but the principle upon which it is to be decided may have a far-reaching effect and involve the rights and interests of many other persons. During the war numerous regiments were enlisted by the government composed of loyal citizens of the seceded States. These persons were thereby brought within our military lines, and sometimes within the territory of the loyal States. When they left their homes to take up arms for the government, they ordinarily left their wives to act as their agents in the management of their property, or gave a power of attorney to a friend. Is it to be held now, that when they crossed the lines they should have known and anticipated that when they crossed the lines they and their wives would become, constructively, enemies; that all prudential business arrangements would be utterly extinguished, and that years after the war a form of judicial forfeiture would be consequent upon their other sacrifices and attach strictly to their adhering to the government instead of to its enemies?

Again, there were thousands of refugees who fled or were forced within our lines during the war, such, for instance, as the late President of the United States, Mr. Johnson, or the late Senator from Tennessee, Mr. Brownlow, or a former judge of the Supreme Court, Mr. Justice Wayne. Is it to be held that all of the ordinary business transactions of life carried on by their agents, during their enforced absence, were void and come constructively under the ban of non-intercourse? It is manifest that such a rule of public policy would have been most prejudicial to the government, and would have operated most harshly against those unfortunate persons whom the government again and again assured of its protection.

When we examine the decisions of the Supreme Court, we find that no such principle has ever been enunciated by that court, and, on the contrary, that domicile has always been treated as a controlling fact in its decisions.

In Grossmeyer's case (7 C. Cl's R., 129), the claimant was domiciled in Washington; whereas the agency was established after the war began, and the purchases were made by the agent within the Confederate lines. In La Pene & Ferre (8 id., 165), the claimants were domiciled in New Orleans, and the agency was created there while it was still under Confederate authority, but the purchases were made by the agent within the Confederate lines after he had become separated from his principals by the capture of the city.

So far the presence of the claimant at the time of the transaction coincided with the place of his domicile; and if the cases had stopped with Grossmeyer and La Pene it might be said that the place of the domicile

was not the controlling fact which rendered this commercial intercourse illegal. But in Warren Mitchell's case (10 id., 120), the claimant at the time of the transaction was within the Confederate lines, and he himself made the purchases without the intervention of an agent. Here, then, was a case where the Supreme Court must decide whether the personal presence of the claimant or the place of his domicile should control in determining the legality or the illegality of his commercial transactions with the enemy on enemy's territory. That court held that the domicile controlled, and that inasmuch as the claimant was domiciled in Kentucky when the war began, and no change of domicile was shown, his transactions were illegal, and no title to the purchased property was acquired.

Again, and more noticeably in Desmare's case (12 id., 26), the claimant was an officer in the Confederate army, but his domicile at the beginning of the war had been in New Orleans, and no change of domicile was shown. At the place of his official residence he bought cotton after the place of his domicile had passed, by capture, into the permanent possession of the United States forces. And again the Supreme Court held that domicile controlled, and that this Confederate officer within the Confederate lines was as much prohibited from commercial intercourse with his associates as if his bodily presence were then actually in New Orleans, the place of his domicile. In other words, the Supreme Court has never held that the accidental whereabout of the claimant's person determines whether his commercial intercourse with the enemy was lawful, and has always held that the legality of the transaction depends upon the locus of his domicile.

Again, there are the cases of American citizens temporarily in belligerent territory. Let it be supposed that in a foreign war—that in the war of 1812, for instance—an American citizen domiciled in this country was constrained by the dangers and difficulties of the voyage to remain in England during hostilities. Can it be maintained that an antecedent agency, created before the war began in this country, would cease, and that he and his agent would become enemies as though he were really domiciled on British territory? Assuredly no such result can be attributed to the decisions of the Supreme Court. That court doubtless had such instances in view when it decided in Desmare's case that the locus of the domicile determines the status of the person, and that a

Confederate officer resident on Confederate territory was construct-
11 ively dwelling in New Orleans, and thereby prohibited from holding commercial intercourse with all persons in the insurrectionary districts.

It is not to be understood or supposed that this doctrine of the Supreme Court would sanction the appointment of an agent across the military lines, or that it would have conferred upon refugees within our lines a right of direct trade or commercial intercourse with the public enemy not enjoyed by our own citizens domiciled within our own lines. The only effect of domicile within the Confederate lines was to keep alive an antecedent agency and prevent the principal and his agent from becoming, constructively, enemies. On the one hand, courts of the United States would not give effect to a new agency created across the lines after the war had begun; on the other, they would consider the refugee as constructively present at the place of his domicile. Accordingly, there is no authority for saying in the present case that the agency terminated when the war began; and, on the contrary, it must be held that so long as the claimant's domicile continued within the Confederate lines, his agent there might continue to transact his busi-

ness with the same effect as if the claimant had remained upon Confederate territory.

The judgment of the court is that the claimant recover of the defendants the proceeds in the Treasury of two bales of cotton, captured in Savannah, at $175.33 per bale, amounting in the aggregate to $350.66.

12 VI.—*Final judgment.*

At a Court of Claims held at the Capitol in the city of Washington, on the 27th day of May, A. D. 1878, judgment was ordered to be entered up as follows:

The court, upon due consideration of the premises, find in favor of the claimant and do order, adjudge, and decree that the said Edward J. Quigley, claimant, do have and recover of and from the United States the sum of three hundred and fifty dollars and sixty-six cents, being the net proceeds of two bales of cotton at $175 $\frac{33}{100}$ per bale.

13 VII.—*Application for appeal and order allowing same.*

From the judgment rendered in the above-entitled cause on May 27, 1878, in favor of claimant, the defendants, by their Attorney-General, on the 20th day of August, 1878, make application for, and give notice of, an appeal to the Supreme Court of the United States.

A. D. R.

THOMAS SIMONS,
Ass't Attorney-General.

Filed August 20, 1878.

AT CHAMBERS.

Allowed.

C. D. DRAKE,
Chief Justice.

14 In the Court of Claims

E. J. QUIGLEY
vs.
THE UNITED STATES. } No. 3054.

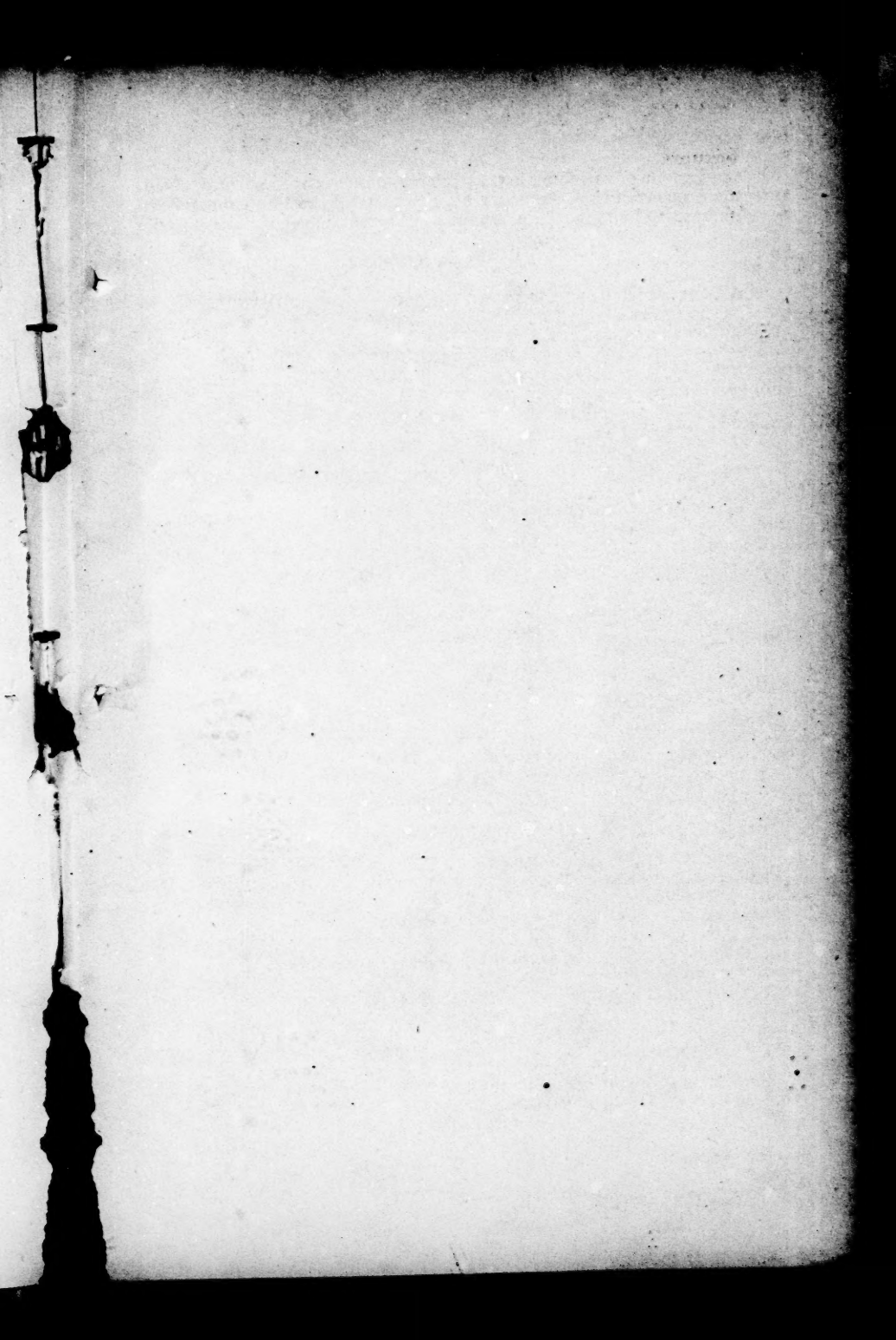
I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the findings of fact by the court, and the conclusion of law thereon, of the opinion of the court, of the final judgment of the court, of the application for and allowance of an appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington, this twenty-seventh day of September, A. D. 1878.

[SEAL.]

JOHN RANDOLPH,
Asst. Clerk Court of Claims.

(Indorsement on cover:) No. 493. The United States, appellants, vs. E. J. Quigley. Court of Claims. Filed 30th September, 1878.



OFFICE SUPREME COURT U. S.
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JAMES H. McKENNEY, Clerk.

In the Supreme Court of the United States.

OCTOBER TERM, 1880.

UNITED STATES
v.
E. J. QUIGLEY. } No. 213.

APPEAL FROM COURT OF CLAIMS.

APPELLANTS' BRIEF.

In the Supreme Court of the United States.

OCTOBER TERM, 1880.

UNITED STATES
v.
E. J. QUIGLEY. } No. 213.

APPEAL FROM COURT OF CLAIMS.

APPELLANTS' BRIEF.

STATEMENT.

Mr. Quigley, a native of Georgia, was domiciled and doing business at Dalton, in that State, in 1860, but just before it seceded he went to Indiana, where he remained throughout the war. Before leaving Dalton Mr. Quigley gave to one McKenney a power of attorney to manage the affairs of the claimant. Under this power McKenney collected "*or acquired*" money belonging to Mr. Q. and invested it in the two bales of cotton in question in 1864, the cotton being subsequently captured in Savannah, sold, and its proceeds ($350.66) placed in the Treasury. (Record, 3, middle.)

Upon these facts the Court of Claims held the claimant entitled to recover the $350.66. (*Ib.*)

ASSIGNMENT OF ERROR.

The United States assign for error the conclusion of law announced by the Court of Claims "that the claimant is entitled to recover the sum of three hundred and fifty dollars and sixty-six cents" (Record, 3), and the final judgment rendered for that sum. (Record, 6, folio 12.)

BRIEF.

I.

Commercial intercourse between persons within and those without our lines of military occupation was forbidden by the very existence of war, antecedent to any legislation upon the subject. The acts of Congress, executive orders and proclamations, and Treasury regulations simply modified instead of either creating or removing (except to a certain extent, under prescribed conditions) this incident of warfare. (The Reform, 3 Wallace, 617; The Sea Lion, 5 Wallace, 630; The Ouachita Cotton, 6 Wallace, 521; U. S. *v.* Grosmayer, 9 Wallace, 74.)

II.

Applying the law to the facts stated, the question is, do they support the judgment rendered? No other facts can be *inferred* to sustain it, if those expressly found are insufficient. (Barnes *v.* Williams, 11 Wheaton, 415; Insurance Co. *v.* Tweed, 7 Wallace, 51; Norris *v.* Jackson, 9 Wallace, 125; Tyng *v.* Grinnell, 92 U. S., 467; Tancred *v.* Christy, 12 M. & W., 316; Bank of Alexandria *v.* Swann, 4 Cranch Cir. Ct., 136.)

The findings are "in the nature of a special verdict." (Rule 1, § 2, regulating appeals from the Court of Claims; U. S. *v.* Smith, 94 U. S., 214; Jefferson *v.* Washington, 19 Maine, 299, 300.)

Is it sufficient to find that McKenney "acquired" money to invest in this cotton, without showing that the acquisition was not by remittance through our lines?

III.

Then, no inference arises from the fact of being domiciled in Georgia in 1860, that he was so domiciled during the war.

On the contrary, it is expressly stated that, upon the secession of Georgia, accomplished or impending, he left that State and went to Indiana, where he remained during the rebellion. If we were at liberty to consider the testimony of the only witness called in the case below we should find it to be that "a few days before or a few days after the State seceded he left and *went back* to Indiana, *where he had before resided*;" that although "he is a native Georgian, he went to Indiana *to reside* and came back to Georgia again *to do business*, and about the beginning of the war he *returned* again to Indiana;" and that "when the civil war broke out Quigley *abandoned* the Confederacy and went to Indiana, *where he had previously married*." Neither from the facts as found nor as they actually existed, upon the only testimony upon the subject, does any inference arise of a domicile in Georgia during the war.

The claimant, when hostilities were imminent, elected between the contending parties, abandoned Georgia and came to Indiana. The length of the struggle no man could foresee. While it was going on it would be forbidden to him to return. He must, then, have come to Indiana proposing to do, at least, what he did do—remain there during the war. In fact, he resided there up to

the very time of filing his petition, January 16, 1868, wherein he describes himself as "of Washington, Davis County, Indiana." (Record, 1, top.) He is, doubtless, there still.

The duration of the war being uncertain, he must have gone to Indiana intending to remain during the war. The *legal effect* of going from one place to another with the intent of staying at the latter an *indefinite* time is to make it the domicile of the party. A floating intention of returning to the former residence at some time in the vague hereafter would not prevent the acquisition of a domicile at the place of present habitation. (Story, Conflict of Laws, § 46; Anderson *v.* Anderson, 42 Vermont, 350, 352, 353; Harris *v.* Firth, 4 Cranch C. C., 710; State *v.* Frest, 4 Harrington, 558, bottom, quoting Story on Conf. of Laws, 45.) This principle announced and applied to the case of one who, on account of the hostilities between Texas and Mexico, went from the former into the latter, and was held to have interrupted and lost his continuous residence in Texas. (State *v.* de Casinova, 1 Texas, 401, 407; State *v.* Groome, 10 Iowa, 308, 315–316; State *v.* Daniels, 44 N. H., 383; State *v.* Bordentown, 32 N. J. Law, 192; Horne *v.* Horne, 9 Ired., L. 99.)

If the question of the *animo revertendi*, or *manendi*, be one of fact, dependent (say) upon intention, and that fact be not found, then this judgment must be reversed; because the fact of a continued domicile in Georgia must be established to authorize a recovery, even if the views announced in the Court of Claims' opinion are correct. "A domicile is the dwelling-place where a person lives, with the intention to remain [indefinitely], and custom has fixed it as a rule that residence for forty days founds jurisdiction." (Erskine's Pr., 14, § 9.)

The above-cited, and other, cases say it is where one has his dwelling-place or residence. (42 Vt., 350; 9 Iredell, Law, 99; 10 Mass., 488; 4 Cranch C. C., 710; 32 N. J. Law, 192; 11 Pick., 410; 23 *Id.*, 170; Warren *v.* Thomaston, 43 Maine, 406.)

In the comparatively recent case (A. D. 1876) of Kennedy *v.* Ryall (67 N. Y., 386) it was observed that, "Genrally speaking, domicile and residence mean the same thing. Immediately before this the court had said: "He had left or emigrated from his own country, located and was at work at New York, thus showing an intention to establish a residence there, and, so far as the evidence goes, evinced no intention or determination to reside anywhere else. *Here was a prima facie evidence that he was domiciled there, and it is for those who claim otherwise to rebut this evidence.*"

IV.

For *different* purposes, a man may have two or more domiciles (Greene *v.* Greene, 11 Pick., 416, top); but "can have only one domicile for *one* purpose at one and the same time." Abington *v.* North Bridgewater, 23 Pick., 177, bottom, where Shaw, C. J., adds: "The supposition that a man can have two domiciles would lead to the absurdest consequences. If he had two domiciles within the limits of distant sovereign states, in case of war, what would be an act of imperative duty to one would make him a traitor to the other. As not only sovereigns, but all their subjects, collectively and individually, are put into a state of war, he would become an enemy to himself and bound to commit hostilities and afford protection to the same persons and property at the same time." (*Ib.*, 177–8.)

In Phillimore on Domicile (17, top) it is noticed that, as the word has come to be used, there may be "a *commercial* domicile in time of war," or a forensic or political domicile in time of peace, different from the *principal* domicile of the party. "A domicile for contracts," he adds, "might not be the testamentary domicile." (Smith *vs.* Croom, 7 Florida, 81, 158, near bottom.)

In the opinion in this last-cited case occurs this passage: "This case [The Ann, C. Rob.,] bears with peculiar weight upon the distinction we have taken between the different kinds of domicile; for while it is strenuously maintained, agreeably with the English doctrine upon the subject, that a British subject cannot voluntarily throw off his national allegiance, yet it is ruled that *for the purposes of commerce* he may cease to be a British subject." (7 Florida, 160, middle.) "The same distinction is recognized in our courts." (*Ib.*, citing O'Guier *vs.* Daniel, 1 Binney, 364, which is made the leading case in this subject in Messrs. Hare & Wallace's American Leading Cases; Livingstone *vs.* Md. Ins. Co., 7 Cranch, 506, 537; The Venus, 8 *Ib.*, 253, 278–9.)

It was the change of domicile that entitled Mr. Quigley to be considered a friend instead of an enemy during the war. (2 Twiss, 298–9.)

Whether or not he changed his principal domicile for all purposes is immaterial to this discussion. He changed it so far as his status in the war is concerned, and so as to bring him within the inhibition of commercial intercourse with his former fellow citizens in Georgia. His *commercial* domicile he changed. He cannot enjoy the benefit of two hostile domiciles—belonging in Indiana for purposes of northern trade, and *constructively* in Georgia for the purposes of trade in the South.

V.

This is not purely a question of *domicile*.

Everybody owing temporary allegiance, even, to the United States was precluded from enjoying, at the same time, the benefits of trade in the rebellious States. What he could not do personally he could not do through an agent. He could confer no greater power than he possessed. Judge Story expresses it, that "the derivative authority expires with the original authority from which it proceeds. The power of constituting an agent is founded upon the right of the principal to do the business himself; and when that right ceases, the right of creating an appointment, *or of continuing the appointment of an agent already made*, for the same purpose, must cease also. In short, the derivative authority cannot generally mount higher, *or exist longer*, than the original authority." (Story on Agency, sec. 481, citing Hunt *v.* Rousmanier, 8 Wheaton, 203.

Again: this power of attorney was given and to operate in Georgia, and should have only the effect assigned to it by the *lex loci*. The supreme court of that State have declared that "whenever the parties became alien enemies, by the laws of war the agency was at an end. It ceased by operation of law." (Howell *v.* Gordan, 40 Ga., 308, decided in 1869.) It was declared in a Tennessee case: "If citizens of Iowa were forbidden by the laws of war, or by the statutes of the general government, of which they were citizens, to trade with a citizen of Tennessee, for the same reason they could not so trade through an agent or attorney in fact. And if, before the war, they constituted an attorney, and by the war

the appointment was revoked, the action of the attorney in fact was a nullity, and passed no title to his vendee." (Conley *v.* Burson, 1 Heiskell, 149, lowest third of page.)

True, there are some *dicta* of this and other courts, to the effect that a pre-existing agency may continue so far as to permit of the payment of debts. The decisions limit the authority to this act; and permit it, because it cannot injure the country of the payee. "Such payments or deliveries involve no intercourse between enemies. The present case exhibits a transaction not wholly within the enemy's territory, but a sale from an enemy to a friend. If that may be made through an agent, then the rule which prohibits commercial intercourse is a mere regulation of the mode of trade. *It may be evaded by simply maintaining an agency in the enemy's territory.*" (Montgomery *v.* U. S., 15 Wallace, 300.) The reception of money in payment of a pre-existing debt is not a contract, but the extinguishment of one. It transfers funds from hostile hands to those of a friend, if the payee be friendly; whereas the purchase of this cotton was a new commercial transaction which put the money of a friend into the very class of property upon the sale of which the Confederacy relied for its continued existence. "The agency to purchase cotton was terminated by the hostile position of the parties." (U. S. *v.* Lapene, 17 Wallace, 604, which see.)

VI.

The nature of the property—contraband of war, or substantially so—was such as to preclude the investment of the money of our friends in it after hostilities became flagrant.

EDWIN B. SMITH,
Assistant Attorney-General.

O

OFFICE SUPREME COURT U. S.
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MAR 7 1881
JAMES H. McKENNEY, Clerk.

Supreme Court of the United States.

OCTOBER TERM, 1880.

No. 213.

UNITED STATES, APPELLANT,

vs.

E. J. QUIGLEY.

BRIEF FOR APPELLEE.

This is an appeal from a judgment of the Court of Claims awarding to the claimant the sum of $350.66 for cotton belonging to him, captured at Savannah.

The claimant was a native of Georgia domiciled in that State, and engaged in mercantile business, but when the State seceded and before hostilities commenced, he went to Indiana and (as stated in the opinion of the Court) there, afterwards, joined the Army of the United States. Before leaving the State he constituted one McKenna his agent to manage his property, and McKenna having collected some money for the claimant invested it for the claimant, in 1864, in the purchase of two bales of cotton, which he held as the property of the claimant.

The question is whether McKenna could lawfully act for the claimant during the existence of hostilities; in other words, whether the occurrence of war did not put an end to the authority of McKenna to act for the claimant and to invest his money in the manner indicated, or in any manner?

The Court very strikingly observes that if Quigley had

remained in Georgia and fought against the United States, no question would or could have been raised as to his right to the cotton. This is unquestionably so; and the right now set up for the United States to retain Quigley's money rests solely upon the ground that he did not remain in Georgia and thus maintain the status of an enemy of the United States, as necessarily did every one who remained, even if he did not take arms against the Government.

The effort of the Attorney General, in his brief, is to show that Quigley changed his domicile by leaving Georgia, and for this purpose he quotes a few words from the testimony. As the Court of Claims finds, as matter of fact, that Quigley's domicile was in Georgia when he constituted McKenna his agent; and as the presumption of law is that domicile once existing remains until a new one is acquired, and as the Court of Claims did not find that a new domicile was acquired, or the old one relinquished, this Court will hardly, at least without calling for and considering the whole evidence, find, as matter of fact, that Quigley's domicile was not in Georgia, where the findings of the Court of Claims leave it.

This Court has had occasion to pass, in several cases, upon questions of domicile, and the Court of Claims has endeavored most sedulously, as the opinion in the record shows, to conform to the directions given in these cases by this Court, and the judges were unanimously of the opinion that in rendering their judgment in favor of the claimant they had done so. I refer to their opinion in the record, and have perfect confidence that this Court will be satisfied that they have correctly understood and faithfully conformed to its views on the question of law involved in the case.

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